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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,159	03/01/2004	Randy D. Sines	FL12-057	3431

39279 7590 08/10/2006

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EXAMINER	
CHIU, RALEIGH W	

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

E

Office Action Summary	Application No.	Applicant(s)	
	10/791,159	SINES, RANDY D.	
	Examiner	Art Unit	
	Raleigh Chiu	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-70 of U.S. Patent No. 5,788,230 for the same reasons set forth in the previous Office action in view of U.S. Patent Number 6,413,162 (Baerlocher *et al.*, hereinafter Baerlocher). Although the conflicting claims are not identical, they are not patentably distinct from each other because they include the same common elements of a deflector pegs/maze, a ball ejector/object introducer, detectors, symbol selector and display. Regarding the symbol selector, it would have been

obvious to one of ordinary skill in the art to allow each individual symbol to have the same frequency of association for each detector in order to insure the players are witness to a truly random event. Such a rationale is considered to support a conclusion of *prima facie* obviousness. Further, to the extent that applicant asserts that gaming machines do not typically have the same frequency of appearance of symbols in each position, Baerlocher discloses that it is old and well-known in the gaming machine art to provide the same number of specific symbols on a game reel strip for uniform odds. See Baerlocher at column 7, lines 13 *et seq*.

3. Claims 1-5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,896,259 for the same reasons set forth in the previous Office action in view of U.S. Patent Number 6,413,162 (Baerlocher *et al*., hereinafter Baerlocher). Although the conflicting claims are not identical, they are not patentably distinct from each other because the include the same common elements of a playing field, launcher/object introducer, a plurality of detecting positions/detectors, symbol selector and display. Regarding the symbol selector, it would have been obvious to one of ordinary skill in the art to allow each individual symbol to have the

same frequency of association for each detector in order to insure the players are witness to a truly random event. Such a rationale is considered to support a conclusion of *prima facie* obviousness. Further, to the extent that applicant asserts that gaming machines do not typically have the same frequency of appearance of symbols in each position, Baerlocher discloses that it is old and well-known in the gaming machine art to provide the same number of specific symbols on a game reel strip for uniform odds. See Baerlocher at column 7, lines 13 *et seq.*

Response to Arguments

4. Applicant's arguments filed 18 November 2005 have been fully considered but they are not persuasive.

Applicant's arguments are solely directed to the symbol selector. In instant claim 1, the symbol selector is required to associate symbols to the plurality of detectors such that each individual symbol has the same frequency of association for each detector.

In the '230 patent, there exists a symbol selector that selects a symbol associated with a particular detector (exit position). The '230 patent does not explicitly set forth the specific frequency of association. However, the '230 patent recognizes the desirability of "true" randomness in chance

games. See the bridging paragraph between columns 3-4. Therefore, as set forth above and in the previous Office action, it would have been obvious to one of ordinary skill in the art to allow each individual symbol to have the same probability of occurrence (*i.e.*, same frequency of association) to insure the players are witness to a truly random event. Further, Baerlocher teaches that it is known in the slot machine art to have individual symbols (*i.e.*, A through Z) with the same frequency of association (*i.e.*, 1/26) for each display to provide for uniform odds.

While it may be true that the claim language of the application specifically allows for the possibility that the odds of selecting "A" may not be the same as the odds of selecting "B", and further that the association of any symbol with the detectors does not influence, change or fix the odds of selecting that symbol or any other symbol, the breadth of the claims is also considered to allow the claims to be made obvious for the reasons set forth above.

Conclusion

5. This is in response to a request for continued examination. All claims are drawn to the same invention claimed earlier and could have been finally rejected on the grounds and art of

record in the next Office action if they had been entered earlier. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

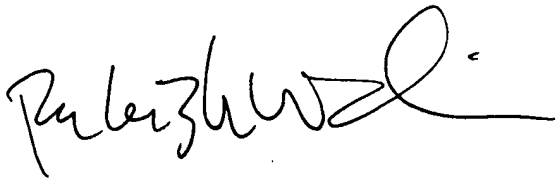
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (571) 272-4408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim, can be reached on (571) 272-4463.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raleigh W. Chiu
Primary Examiner
Technology Center 3700

RWC:dei:feif
4 August 2006